IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 164 OF 2007

IN

SUIT NO. 937 OF 1981

Dr.Narayan Kisanlal Malpani & Ors.....Plaintiffs.
Versus
M/s.Jamshedji Rustomji Devidas
& Jani & Merchant & Anr..... .....Defendants.

Mr.Shailesh Shah i/by Mr. R. R. Nagda
for the Plaintiffs.
Mr. F.Divetre, Sr. Counsel with Mr. M. S. Doctor
i/by M/s.Federal & Rashmikant for the Defendants.

CORAM : D. G. KARNIK, J.

DATED : 6TH FEBRUARY, 2007.

P.C.:

Heard Counsel for the parties.

2. This chamber summons is taken out in a suit, which is listed on the hearing board. Hence, the chamber summons is required to be heard by the Judge hearing the suit. By consent, the chamber summons is heard finally.

3. Counsel for the plaintiffs does not press prayer

clause (a) of the chamber summons and seeks liberty to take out fresh chamber summons, if so required, after the documents are disclosed by the defendants. Accordingly, prayer clause (a) is allowed to be withdrawn with liberty as prayed.

4. As regards the issuance of a witness summons, Counsel for the defendants does not object for issuing of witness summons to witness nos.1 and 4 mentioned in annexure "B". Issue witness summons to witness nos.1 and 4 of the annexure "B", returnable on 5th March, 2007.

5. As regards the witnesses 2 and 3 of annexure "B" to the chamber summons, the documents demanded are too generic. It is prayed that the witness should be directed to produce the entire correspondence. The Correspondence consists of exchange of letters, some of which could be original and some of which could be office copies. No reasons have been mentioned, how the office copies, which amounts secondary evidence be summoned. Furthermore, the relevancy of the correspondence is also not disclosed in the affidavit in support of the chamber summons. Correspondence appears to have been made by the Solicitors as an

agent of the plaintiffs. This would mean that the correspondence is in possession of either the plaintiffs or their own agent. The plaintiffs, therefore, cannot ask for such correspondence by a witness summons. Hence, prayer for issuing witness summons to witness nos.2 and 3 mentioned in annexure "B" to the chamber summons is rejected.

6. The chamber summons is disposed of, accordingly.

Sd/-

(D. G. KARNIK, J.)